IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO. 37 OF 2007

IN

NOTICE OF MOTION NO. 4844 OF 2006

IN

L.C.SUIT NO. 4981 OF 2006

Vasant Valley Aster Tower Co-op.Hsg.
Soc. Ltd. .. Appellants

Vs.

Municipal Corporation of Greater
Mumbai & Ors. ..Respondents

Mr. A.M. Saraogi for the Appellants.
Ms. Geeta Joglekar for B.M.C.
Mr. S.V.Prabhavalkar for Respondent No.2.
Mr. M.D.Siodia with Ms. D.S.Retiwala for Respondent No.3.

CORAM: A.M.KHANWILKAR,J.

DATE : 31st January,2007.

P.C.

1. Heard Counsel for the parties.

Admit.

2. Ms. Geeta Joglekar waives notice for Respondent

NO.1, Mr. Prabhavalkar for Respondent No.2 and Mr. Siodia for Respondent No.3.

3. As short question is involved in this Appeal, it is taken up for final disposal by consent.

4. This Appeal from Order takes exception to the judgment and order passed by the City Civil Court, Mumbvai, dated 19th December, 2006 on an unregistered Notice of Motion taken out by the plaintiffs in Long Cause Suit No.4981 of 2006. By that order, the Court disposed of the said Notice of Motion on the reasoning that it was satisfied that the work which was carried on by the defendant No.2 was consistent with the approved plans as was stated by the representative of the Corporation. No other reason has been recorded by the Trial Court for disposing of the Notice of Motion. If I may say so, this approach of the Trial Court in hastily disposing of the Notice of Motion cannot be countenanced. The Trial Court has not bothered to address the nature of the reliefs claimed by the plaintiffs and whether the case made out by the defendants in the context of those reliefs was to be accepted or otherwise. The plaintiffs in the Notice of Motion have prayed for the following reliefs :-

> "(a) that this Hon’ble Court be pleased to grant a temporary order and injunction restraining the Defendant Nos. 2 and 3 from in any manner

carrying out any work of construction contrary to what is published in the brochure so published by the Defendant No.2 and as also the plan initially approved by the Defendant NO.1 while the Defendant No.2 sold the flats to the respective flat purchasers/members of the Society of the Plaintiffs hereinabove.

(b) that this Hon'ble Court be pleased to grant a permanent order and injunctino restraining the Defendant Nos. 2 and 3 from in any manner whatsoever interfering in the functioning of the Society of the Plaintiffs and/or depriving the Plaintiff's physical use and occupation of the property being Survey No. 104A situated at Village Dindoshi, taluka Borivali along with the building constructed thereon including the common space, basement etc. on such terms as this Hon'ble Court may deem fit and proper.

(c) that this Hon'ble Court be pleased to pass appropriate order and direction directing the Defendant Nos. 2 and 3 to forthwith furnish copy of all the plans in respect of the property being Plot No.A, Survey No.104A situate at Village Dindoshi, taluka Borivali right from beginning till the last plan, if any, so sanctioned by the office of the Defendant No.1, on such terms as this Hon'ble Court may deem fit

and proper."

Assuming that the Trial Court is right in answering the issue with regard to the nature of construction undertaken by the Defendant No.2, as noted in the impugned order, that however does not answer the grievance of the Plaintiffs that the construction so undertaken by the Defendant No.2 was not consistent with the work specified in the brochure published by the Defendant No.2 and also the plan "initially approved" by the Defendant No.1. In other words, it is not clear as to whether the Trial Court intended to observe that the work undertaken by the Defendant No.2 was neither in contravention of the brochure published by the Defendant No.2 nor the plan "initially approved" by the Defendant No.1-Corporation. It is possible that the Defendant no.2 must have submitted amended plans and the work now undertaken is on the basis of such amended plans. In that case, the work cannot be said to be in accordance with the plan "initially approved" by the Defendant No.1. It would be a different matter if the amended plans have been approved after following the procedure including taking consent of the plaintiffs. That aspect will have to be considered in the first place by the Trial Court.

5. In any case, the Trial Court has made no observation with regard to the reliefs claimed in terms of prayer clauses (b) and (c) as to whether the Plaintiffs were

entitled for these reliefs or otherwise. Accordingly, the only course open to this Court is to set aside the impugned judgment and order and restore the Notice of Motion to the file of the Trial Court to its original number, to be heard and decided expeditiously on its own merits in accordance with law. All questions in the said Notice of Motion will have to be decided afresh.

6. The parties shall appear before the Trial Court on 23rd February, 2007 at 2.30 p.m. on which date the Trial Court may proceed to hear the Notice of Motion finally or on such other date as may be convenient to it to ensure that the same is disposed of before 30th March, 2007. The parties shall complete the pleadings on or before 12th February, 2007.

7. At this stage, the Counsel for the appellants prays that the Respondents be directed to maintain status quo with regard to the suit property. It is not possible to accept the submission as there was no ad-interim order in favour of the Appellants. Besides, as the Notice of Motion is expedited, the appropriate course is to dispose of the Notice of Motion finally within the specified time. It is however, made clear that Respondent No.2 shall carry on the construction entirely at his own risk, costs and consequences. In the event the Trial Court records finding in favour of the plaintiffs, it will be open to the Trial Court to pass appropriate order for removal of the structure

which is unauthorised or contrary to the approved plans.

(A.M.KHANWILKAR,J.)